

ARTICLE V

FINANCIAL PROVISIONS

5.1. The Parties estimate that the performance of the obligations under this Agreement shall not cost more than 18.0 Million 2002 U.S. dollars or 18.0 Million Euros. The U.S. dollar shall be the reference currency for the Project, and the Project fiscal year shall be the U.S. fiscal year (1 October to 30 September).

The Financial Cost may be changed only upon a written amendment by the Parties. The Parties shall use their best efforts to perform, or to have performed, the work specified in Article III (Scope of Work) and fulfill all of the obligations under this Agreement.

If at any time the PMs have reason to believe that the Financial Cost of the Project shall be exceeded, the PMs shall promptly notify the SPMG and shall set forth a new estimate of the Financial Cost of the Project together with supporting documentation. The SPMG shall advise the PM as to what action should be taken.

5.2. Each Party shall contribute its equitable share of the full Financial Costs of the Project, including overhead costs, administrative costs, and costs of claims, and shall receive an equitable share of the results of the Project.

5.3. The full Financial Costs of the Project, as identified in this Article of this Agreement, shall be shared according to the following percentages:

DOD 50% FMOD 50%

5.4. Participation in the Project shall include both monetary and non-monetary contributions to directly support Project efforts. Values have been mutually agreed to for Project non-monetary contributions (e.g., laboratory support). The full Financial Costs of the Project, as identified in this Article, are as follows:

Table 1 - Monetary Contributions (By U.S. Fiscal Year in thousand U.S. dollars)

Monetary Contributions	FY02	FY03	FY04	FY05	FY06	TOTAL
DOD Monetary Contributions	1,500	1,800	1,600	1,500	500	6,900
FMOD Monetary Contributions	650	1,500	1,500	1,600	1,650	6,900
TOTAL (DOD & FMOD) Monetary Contributions	2,150	3,300	3,100	3,300	2,150	13,800

Table 2 - Non-Monetary Contributions (By U.S. Fiscal Year in thousand U.S. dollars)

Non-Monetary Contributions	FY02	FY03	FY04	FY05	FY06	TOTAL
DOD Non-Monetary Contributions	670	600	600	150	0	2,020
FMOD Non-Monetary Contribution	1,500	120	200	200	0	2,020
TOTAL (DOD & FMOD) Non-Monetary Contributions	2,170	720	800	350	0	4,040

5.5. The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred:

- 5.5.1. Costs associated with national representation at meetings by non-SINCE Agreement members;
- 5.5.2. Costs associated with any unique national requirements identified by a Party; and
- 5.5.3. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.

5.6. The PMs shall be responsible for establishing the detailed financial management procedures under which the Project shall operate. These procedures must accord with the national accounting and audit requirements of the Parties.

5.7. A Party shall promptly notify the other Party if available funds are not adequate to fulfill its obligations under this Agreement. If a Party notifies the other Party that it is terminating or reducing its funding for this Project, both Parties shall immediately consult with a view toward continuation on a modified basis.

5.8. Where national auditors need to obtain specific data or to inspect records to be able to fulfill their national obligations, the DOD and FMOD shall facilitate access to such information.

5.9. The obligations of the Parties shall be subject to the availability of funds for such purposes.

ARTICLE VI

CONTRACTUAL ARRANGEMENTS

6.1. If either Party determines that Contracting is necessary to fulfill that Party's obligations under Article III (Scope of Work) of this Agreement, that Party shall contract in accordance with its respective national laws, regulations and procedures.

6.2. When one Party individually Contracts to perform a task under this Agreement, it shall be solely responsible for its own Contracting and the other Party shall not be subject to any liability arising from such Contracts.

6.3. For all Contracting activities performed by either Party, the PMs shall, upon request, be provided a copy of all statements of work prior to the development of solicitations.

6.4. Each Party's Contracting Agency shall negotiate to obtain the rights to use and disclose Project Information required by Article VIII (Disclosure and Use of Project Information). Each Party's Contracting Agency shall insert into its prospective Contracts (and require its subcontractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article VIII (Disclosure and Use of Project Information), Article IX (Controlled Unclassified Information), Article XI (Security) and Article XII (Third Party Sales and Transfers). During the Contracting process, each Party's Contracting Agency shall advise prospective Contractors of their obligation to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that shall restrict that Party's freedom to disclose information or permit its use. The Contracting Agency shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that shall result in restrictions.

6.5. In the event a Party's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Article VIII (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, that Party's PM shall notify the other Party's PM of the restriction(s).

6.6. Each Party's PM shall promptly advise the other Party's PM of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

ARTICLE VII

PROJECT EQUIPMENT

7.1. Each Party may provide Project Equipment identified as being necessary for executing the tasks undertaken in accordance with this Agreement to the other Party. Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to the other shall be developed and maintained by the PMs, approved by the SPMG, and shall be incorporated after conclusion of the last experiment into this Agreement in accordance with Article IV (Management) by Amendment.

7.2. The receiving Party shall maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Party has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the Project Equipment to the providing Party in as good a condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Party shall return the Project Equipment to the providing Party (unless otherwise specified in writing by the providing Party) and pay its replacement value as computed pursuant to the providing Party's national laws and regulations. If the Project Equipment is lost while in the possession of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value specified in Annex A (Inventory of Project Equipment Exchanges).

7.3. The providing Party shall deliver Project Equipment to the receiving Party at a mutually agreed location. Possession of the Project Equipment shall pass from the providing Party to the receiving Party at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Party.

7.4. All Project equipment that is transferred shall be used by the receiving Party only for the purposes of carrying out this Agreement, unless otherwise consented to in writing by the providing Party. In addition, in accordance with Article XII (Third Party Sales and Transfers), Project Equipment shall not be re-transferred to a Third Party without the prior written consent of the providing Party.

7.5. Project Equipment transferred to one Party under this Agreement shall be returned to the providing Party prior to the termination or expiration of this Agreement.

ARTICLE VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1. General

Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Parties intend to acquire sufficient Project Information and rights to use such information to promote the objectives of this Agreement. The nature and amount of Project Information to be acquired shall be consistent with the objectives stated in Article II (Objectives), Article III (Scope of Work), and Article VI (Contracting Provisions).

8.2. Government Project Foreground Information

8.2.1. Disclosure: Project Foreground Information generated by a Party's military or civilian employees shall be disclosed without charge to both Parties.

8.2.2. Use: Each Party may use all Government Project Foreground Information without charge for Defense Purposes. The Party generating Government Project Foreground Information shall also retain its rights of use thereto. Any sale or other transfer to a Third Party, shall be subject to the provisions of Article XII (Third Party Sales and Transfers) of this Agreement.

8.3. Government Project Background Information

8.3.1. Disclosure: Each Party, upon request, shall disclose to the other Party any relevant Government Project Background Information generated by its military or civilian employees, provided that:

8.3.1.1. Such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

8.3.1.2. Such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.3.1.3. Disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

8.3.2. Use: Government Project Background Information disclosed by one Party to the other may be used without charge by the other Party for Project Purposes only; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

8.4. Contractor Project Foreground Information

8.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, shall be disclosed without charge to both Parties.

8.4.2. Use: Each Party may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Party. The Party whose Contractors generate and deliver Contractor Project Foreground Information shall also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, shall be subject to the provisions of Article XII (Third Party Sales and Transfers) of this Agreement.

8.5. Contractor Project Background Information

8.5.1. Disclosure: Any Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors shall be made available to the other Party provided the following conditions are met:

8.5.1.1. Such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

8.5.1.2. Such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

8.5.1.3. Disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

8.5.2. Use: Project Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by the other Party for

Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

8.6. Alternative Uses of Project Information

8.6.1. Any Project Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this Agreement, unless otherwise consented to in writing by the providing Party.

8.6.2. The prior written consent of each Party shall be required for use of Project Foreground Information for purposes other than those provided for in this Agreement.

8.7. Proprietary Project Information

8.7.1. All Project Information subject to proprietary interests shall be identified and marked, and it shall be handled as Controlled Unclassified Information.

8.7.2. The provisions of the "United States-German Agreement to Facilitate Interchange of Patent Rights and Technical Information for Defense Purposes" 4 January 1956, shall apply to Proprietary Project Information provided for the purpose of this Agreement.

8.8. Project Inventions and Patents

8.8.1. Reporting of Project Inventions. A Party shall disclose to the other Party any Project Invention made by its respective employees or Contractors as promptly as possible after the Project Invention is made. The disclosure shall be in the form of a written report listing the inventor(s) and describing the manner and process of making and using the Project Invention in sufficient technical detail as to enable any person skilled in the art to which it pertains to make and use the Project Invention.

8.8.2. Title of Project Inventions. Each Party shall retain title to each Project Invention made by its respective employees.

8.8.2.1. The Party retaining title to such Project Inventions shall grant to the other Party at least a royalty-free, nonexclusive,

irrevocable license to practice or have practiced world-wide for Defense Purposes by or on behalf of the other Party such Project Inventions covered by any resulting Patents.

8.8.2.2. The Party retaining title to such Project Inventions may, in its discretion, grant rights in such Project Inventions covered by any resulting Patents to the other Party, or any other person or entity, upon such terms and conditions as it deems appropriate.

8.8.3. Title to Joint Project Inventions. Title to Project Inventions made jointly by employees of the Parties shall be held jointly by the Parties unless otherwise determined.

8.8.3.1. The Parties may grant rights in such joint Project Inventions to any other person or entity, upon such terms and conditions as they unanimously deem appropriate.

8.8.4. Contractor Generated Project Inventions. Title to Project Inventions made by Contractors shall be held in accordance with the terms of the respective Contract. Where any Contract fails to specify how title in any Patent shall be held, title shall be determined in accordance with the national laws governing Project Inventions by Contractors of the Party who awarded the Contract.

8.8.4.1. Contractor Generated Project Inventions in Unique National Variants. Where Project Inventions are made in connection with a unique national variant, paid for fully by or on behalf of only one Party, regardless of who is the Contracting Agency, the Contracting Agency must ensure that the Contract grants to the Party funding the national variant any rights as directed by that Party.

8.8.4.2. Contractor Generated Project Inventions of Parties. Where a Contract is awarded by a Party on its own behalf or by a Contracting Agency on behalf of one or both of the Parties, the Contract so awarded must ensure that the owner of any Project Invention made

by a Contractor shall grant to the Party(ies) at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced worldwide for Defense Purposes by or on behalf of the Party(ies) the Project Invention covered by any resulting Patents.

8.8.5. Patent Applications. A Party having the right to hold title to a Project Invention may elect to file Patent applications or otherwise seek Patent protection thereon provided it so advises the other Party of its intention to do so and the countries in which it intends to seek Patent protection within 60 days from the date it reports the Project Invention to the other Party.

8.8.5.1. If a Party initially elects to seek Patent protection, but later decides not to continue seeking Patent protection, or if a Party decides not to share the costs of seeking Patent protection of a joint Project Invention, then the other Party may elect (but is not required) to seek Patent protection on such a Project Invention in those countries in which the Party has not elected to seek Patent protection.

8.8.5.2. If the other Party elects to seek Patent protection in those countries, the Party initially having the right to seek Patent protection on the Project Invention agrees to consent to such filing by the other Party and the other Party shall equitably share any royalties from the licensing of any resulting Patents taking into consideration the expenses incurred by each Party in securing Patent protection.

8.8.5.3. A Party shall not file or cause to be filed any Patent application outside the United States of America or the European Community member states, or publish or cause to be published any such application or Patent thereon anywhere, without the other Party's prior written consent where the application contains either:

8.8.5.3.1. The other Party's Project Background Information, or

8.8.5.3.2 Jointly Generated Foreground
Information.

8.8.5.4. Patent applications on Project Inventions which contain Classified Information or Materiel shall be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for its Applications for Patents have been Made, signed on 21 September 1960, and its Implementing Procedures.

8.8.6. Patent Prosecution

8.8.6.1. The expenses attendant to seeking Patent protection as specified above shall be borne by the Party seeking Patent protection. Where both Parties jointly seek Patent protection, the expenses attendant to seeking the Patent protection shall be shared equally between the Parties, unless mutually deemed otherwise.

8.8.6.2. Each Party shall provide the other with copies of Patent applications it files in Patent offices, along with a power to inspect and make copies of all documents retained in the files of the applicable Patent office that are available for inspection and copying by a Party seeking Patent protection.

8.8.6.3. A Party seeking Patent protection shall have the right to control the Patent prosecution where it is solely funding the expenses attendant to seeking the Patent protection. Where both Parties are seeking Patent protection, they shall jointly control the Patent prosecution if each is funding a portion of the expenses attendant to seeking the Patent protection. Both Parties shall cooperate with each other in seeking Patent protection.

8.8.7. Maintenance Fees. The fees payable to a Patent office in order to maintain the Patent on a Project Invention shall be paid by the Party having title to the Patent or shall be shared equally if title is held jointly by both Parties. If a Party decides not to pay the required maintenance fees, it shall immediately notify the other

Party, who may pay the maintenance fees if it desires to maintain the enforcement of the Patent. In this case, the Party who has decided not to pay the maintenance fees shall assign its rights to the other Party.

- 8.8.8. Each Party shall notify the other of any Patent infringement claim and, insofar as possible, each Party shall extend to the other Party any assistance in defending such claims arising in the course of work performed under this Agreement. The Parties shall, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under this Agreement of any invention covered by a Patent issued by their respective countries. Each Party is responsible for handling all Patent infringement claims made in its territory and to inform the other Party of such claims and to consult with the other Party during the handling and prior to any settlement of such claims.

ARTICLE IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1. Except as otherwise provided in this Agreement or as authorized in writing by the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

- 9.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in ARTICLE VIII (Disclosure and Use of Information);
- 9.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1, and shall be subject to the provisions of ARTICLE XII (Third Party Sales and Transfers); and
- 9.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2, unless the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

9.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings shall be defined in the Project Security Instruction.

9.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure that the Contractors are legally bound to control such information in accordance with the provisions of this Article.